

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code.

The General Assembly enacted legislation in 2010 Iowa Acts, House File 2531, sections 169 to 174, that made changes in review procedures and acceptance of reports from certified groundwater professionals on investigation and cleanup of petroleum contamination from underground storage tanks. A groundwater professional’s site investigation, classification, and corrective action design reports must be accepted unless, within 90 days of receipt, the Department identifies material information in the report that is inaccurate or incomplete. From July 1, 2010, through June 30, 2011, the Department has 120 days rather than 90 days to review and comment on the reports.

The proposed amendments revise existing rules to include the changes in review procedures and acceptance of reports from certified groundwater professionals on investigation and cleanup of petroleum contamination from underground storage tanks.

Any interested person may submit written comments on the proposed amendments on or before November 16, 2010. Written comments should be sent to Paul Nelson, Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail paul.nelson@dnr.iowa.gov.

Three public hearings will be held at 1 p.m. on the dates indicated at the following locations, at which time persons may present their views either orally or in writing.

November 9, 2010	Coralville Public Library Meeting Room B 1401 5th Street Coralville
November 10, 2010	Norelius Community Library 1403 1st Avenue South Denison
November 15, 2010	Wallace State Office Building Fourth Floor West Conference Room 502 E. 9th Street Des Moines

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement 2009 Iowa Code Supplement section 455B.474 as amended by 2010 Iowa Acts, House File 2531, sections 169 to 174.

The following amendments are proposed.

ITEM 1. Rescind paragraphs **135.9(11)“e”** to **“g”** and adopt the following **new** paragraphs in lieu thereof:

e. Upon receipt of the groundwater professional’s certified Tier 1 report, the groundwater professional’s proposed site classification for the site shall be determinative unless, within 90 days of

receipt, the department identifies material information in the report that is inaccurate or incomplete. Material information may be data found to be inaccurate or incomplete or a report that lacks information which, if correct and complete, would result in a different site classification than proposed by the certified groundwater professional. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within 90 days of receipt of the report and shall work with the groundwater professional and the party responsible for cleanup to obtain correct information or additional information necessary to appropriately classify the site. If the groundwater professional recommends proceeding to Tier 2, or a Tier 2 site cleanup report is required pursuant to 135.7(5)“g,” 135.8(5), or 567—135.9(455B), the groundwater professional’s site classification and pathway classification recommendations shall not be considered determinative until the Tier 2 report is submitted for review as provided in 135.10(11).

f. If a “no action required” site classification is proposed, the department shall review the report in accordance with 135.12(6) and the review standards in paragraph 135.9(11)“e.”

g. From July 1, 2010, through June 30, 2011, the department shall have 120 days rather than 90 days as provided in paragraphs 135.9(11)“e” and “f” to review and respond to the report.

ITEM 2. Rescind paragraphs **135.10(11)“d”** to **“f”** and adopt the following **new** paragraphs in lieu thereof:

d. Upon receipt of the groundwater professional’s certified Tier 2 report, the groundwater professional’s proposed site classification for the site shall be determinative unless, within 90 days of receipt, the department identifies material information in the report that is inaccurate or incomplete. Material information may be data found to be inaccurate or incomplete or a report that lacks information which, if accurate and complete, would result in a different site or pathway classification than proposed by the certified groundwater professional. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within 90 days of receipt of the report and shall work with the groundwater professional and the party responsible for cleanup to obtain correct information or additional information necessary to appropriately classify the site. If the groundwater professional recommends proceeding to Tier 3, the groundwater professional’s site classification and any pathway classification recommendations subject to or influenced by a Tier 3 assessment shall not be considered determinative until the Tier 3 report is submitted for review as provided in 567—135.11(455B).

e. If a “no action required” site classification is proposed, the department shall review the report in accordance with 135.12(6) and the review standards in paragraph 135.10(11)“d.”

f. From July 1, 2010, through June 30, 2011, the department shall have 120 days rather than 90 days as provided in paragraph 135.10(11)“d” to review and respond to the report.

ITEM 3. Amend paragraph **135.12(6)“c”** as follows:

c. ~~For reclassification from high or low risk, a~~ A groundwater pathway shall be classified as reclassified from high risk to no action required if all field data is below the site-specific target level line and if exit monitoring criteria have been met, ~~except as provided in 135.12(6)“g.”~~. To satisfy exit Exit monitoring criteria, means that the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples ~~must be~~ are below the site-specific target level line. Other criteria include the following: The first of the three samples for the source well and transition well must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

ITEM 4. Reletter paragraphs **135.12(6)“d”** to **“g”** as **135.12(6)“e”** to **“h.”**

ITEM 5. Adopt the following **new** paragraph **135.12(6)“d”**:

d. A low risk site shall be reclassified as “no action required” if field data is below the site-specific target level and if exit monitoring criteria have been met pursuant to 135.12(6)“c” or if the site has maintained less than the applicable target level for four consecutive sampling events separated by at least six months as defined in the monitoring plan regardless of exit monitoring criteria and guidance.

ITEM 6. Amend relettered paragraph **135.12(6)“f”** as follows:

~~f. Upon~~ As a condition of obtaining site classification as no action required, all groundwater monitoring wells must be properly plugged in accordance with 567—Chapters 39 and 49 unless the department requires selected wells to be maintained or written approval to maintain the well is obtained by the department a written request with justification and a plan for properly maintaining the wells are submitted to the department for approval. Approval to maintain wells shall be deemed granted if not disapproved with reason within 30 days of request.

ITEM 7. Rescind paragraphs **135.12(9)“d”** and **“e”** and adopt the following new paragraphs in lieu thereof:

d. Review. A CADR submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within 90 days of receipt of a CADR, the department identifies material information in the CADR that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based on industry standards, the department may reject the report and require modifications. If the department does not reject the report within 90 days of receipt, the report shall be deemed approved as submitted unless changes to the report are requested by the groundwater professional. The department shall work with the groundwater professional and the owner or operator to correct any materially inaccurate information or to obtain the additional information necessary to determine the appropriate corrective action response as soon as practicable. However, from July 1, 2010, through June 30, 2011, the department shall have 120 days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete.

e. Memorandums of agreement. Owners or operators that fail to implement the actions or meet the activity schedule in a memorandum of agreement resulting from a corrective action meeting or other written corrective action plan agreement or that fail to implement the actions or meet the schedule outlined in an approved CADR are subject to legal action.

ITEM 8. Amend paragraph **135.12(10)“b”** as follows:

b. No further action certificate. When the no action required site classification has been determined based on a recommendation of the certified groundwater professional as provided in 135.9(11), 135.10(11) and 135.12(12) (see also 2009 Iowa Code Supplement section 455B.474(1) “h”(1) and (3) as amended by 2010 Iowa Acts, House File 2531, section 174), the department shall issue a no further action certificate.

The department will issue a no further action certificate to an owner or operator of an underground storage tank from which a release has occurred, the current property owner, or other responsible party who has undertaken the corrective action warranting classification of the site as no action required. ~~The person requesting the certificate shall provide the department with~~ Prior to the issuance of a no further action certificate, an accurate legal description of the property on which the underground storage tanks are or were formerly located shall be submitted to the department. The following conditions apply:

(1) If free product is present, the department shall not issue a no further action certificate until the department has approved termination of all free product assessment and recovery in accordance with 135.7(5).

~~(1) (2)~~ (2) The site has been determined by a certified groundwater professional to not present an unreasonable risk to the public health and safety or the environment;

~~(2) (3)~~ (3) A person issued the certificate or a subsequent purchaser of the site cannot be required to perform further corrective action solely because action standards are changed at a later date. Action standards refer to applicable site-specific standards under this rule;

(4) The certified groundwater professional has certified that all groundwater monitoring wells have been permanently closed in accordance with 135.12(6)“f” with the exception of wells that are allowed to be maintained pursuant to 135.12(6)“f.” Wells not properly maintained shall be referred to the water supply section of the department that enforces 567—Chapter 39 and 567—Chapter 49.

~~(3)~~ (5) The certificate shall not prevent the department from ordering remediation of a ~~new~~ release ~~or~~ identified subsequent to the release for which the no further action certificate was issued. The certificate shall not prevent the department from requiring corrective action of a release of a regulated substance from an unregulated tank;

(4) (6) The certificate will not constitute a warranty of any kind to any person as to the condition, marketability or value of the described property;

~~(5)~~ (7) The certificate shall reflect any institutional control utilized to ensure compliance with any applicable Tier 2 level; and may include a notation that the classification is based on the fact that designated potential receptors are not in existence;

~~(6)~~ (8) The certificate shall be in a form which is recordable in accordance with Iowa Code section 558.1 et seq., and substantially in the form as provided in Appendix C.

(9) The owner or operator or other persons conducting corrective action shall be responsible for recording the no further action certificate with the county recorder and return a file-stamped copy to the department within 30 days of the issue date. At its discretion, the department may record the no further action certificate with the appropriate county recorder as authorized in 2009 Iowa Code Supplement section 455B.474(1) "h"(3) as amended by 2010 Iowa Acts, House File 2531, section 174.